

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**US BANK, N.A., AS TRUSTEE FOR
THE STRUCTURED ASSET
SECURITIES CORPORATION
MORTGAGE LOAN TRUST 2006-BC1**

**v.
RODERICK E. SMITH, ET AL.**

RESPONDENT,

APPELLANT.

DOCKET NUMBER WD77576

DATE: August 11, 2015

Appeal From:

Jackson County Circuit Court
The Honorable Justine E. Del Muro, Judge

Appellate Judges:

Division Four: Alok Ahuja, Chief Judge, Presiding, Gary D. Witt, Judge, and Kathleen A. Forsyth, Special Judge

Attorneys:

Beverly M. Weber, Kansas City, MO and David T. Hamilton, St. Charles, MO, for respondent.

Roderick E. Smith, Appellant Pro Se.

MISSOURI APPELLATE COURT OPINION SUMMARY

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THE STRUCTURED ASSET
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LOAN TRUST 2006-BC1,**

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Jackson County

Before Division Four Judges: Alok Ahuja, Chief Judge, Presiding, Gary D. Witt, Judge, and Kathleen A. Forsyth, Special Judge

Roderick Smith ("Smith") refinanced his home mortgage with Finance America, who endorsed the note in blank. The loan was later assigned to US Bank, as trustee for a Structured Asset Securities Loan Trust. US Bank discovered that the deed of trust contained an incorrect legal description of the property meant to secure the note, it petitioned for reformation of the deed, quiet title in Smith's name and a declaratory judgment that US Bank was the priority lienholder. Smith responded that the deed contained the correct legal description and that it accurately reflected the agreement between the parties. Smith maintained that although his original loan was secured by two adjoining lots, one containing his home and the other vacant, it was only the vacant lot that was to be encumbered by the refinanced loan. Smith also alleged that US Bank did not have standing to bring the action because it was not a party to the original loan transaction and because the note was not assigned to US Bank until after the suit was filed.

The Circuit Court of Jackson County granted US Bank partial summary judgment as to its standing, finding that US Bank was, in fact, the note-holder. A bench trial followed, after which the court found that the documentation of the loan evidenced that the lot with Smith's home on it was the lot intended by both parties to be encumbered by the loan. It further found a mutual mistake based on the scrivener's error of attaching the vacant lot legal description to the deed of trust instead of that for the home's lot. The court granted reformation of the deed of trust, quieted title in Smith's name and declared that US Bank was the priority lienholder to the deed. Smith appeals.

On appeal, Smith argues that US Bank had no standing to bring the action because it was not the note-holder and that the court erred in finding a mutuality of mistake because Smith intended that the vacant lot was to secure the loan and that, even if there was a mistake made, it was not a mutual mistake because he had no role in drafting the documents.

AFFIRMED AS MODIFIED.

Division Four holds:

Although the note and deed of trust were physically held by US Bank's custodian, Deutsche Bank, US Bank was and is the note-holder with authority to enforce the note because Deutsche Bank was acting solely as a custodial agent for US Bank. US Bank, as trustee for the trust in which Smith's note was placed, is the proper note-holder because Missouri law holds that a trustee is a legal owner of the property in the trust. Further the right to enforce the Deed of Trust transfers with the Note. Therefore, US Bank has standing to enforce the note and deed of trust in this action.

The evidence at trial supported the trial court's judgment in equity to reform the legal description in the deed of trust. All of the closing documents, which Smith signed indicated that Smith would use the property secured by the deed of trust as his primary residence, showing the parties intent that the lot with the home was intended to be security for the loan. Further, Smith asserted at trial that the title company should be held responsible for the mistake made in the closing documents, from which the trial court found evidence that Smith acknowledged there was in fact a mistake in the legal description. Based on the evidence, the trial court did not err in finding a mutuality of mistake and reforming the deed of trust to reflect that the deed of trust was to list the legal description for the lot containing Smith's home and, therefore, that lot was encumbered by the note.

The judgment of the trial court reforming the deed of trust did not contain the full legal description of the lot intended to be encumbered by the note because, absent a legal description, an address and/or government agency parcel ID number is insufficient to properly reform a deed of trust. Thus, we modify the court's judgment to include the full and correct legal description as contained in our judgment.

Opinion by: Gary D. Witt, Judge

August 11, 2015

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